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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/723,882	11/26/2003	Yohiki Takimoto	42479-8200	9343

7590 07/05/2005

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EXAMINER

ALIMENTI, SUSAN C

ART UNIT	PAPER NUMBER
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3644

DATE MAILED: 07/05/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/723,882	Applicant(s) TAKIMOTO, YOHIKI	
	Examiner Susan C. Alimenti	Art Unit 3644	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
 - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
 - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
 - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 21 March 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-14 is/are pending in the application.
- 4a) Of the above claim(s) 6, 11 and 12 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-5, 7-10, 13 and 14 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

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DETAILED ACTION

Election/Restrictions

1. Newly submitted claims 11 and 12 are directed to an invention that is independent or distinct from the invention originally claimed for the following reasons: Claims 11 and 12 are directed to the non-elected species of as viewed in 5A-5C

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 11 and 12 are withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

3. Claims 1-5, 7-9, and 13 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claims contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventors, at the time the application was filed, had possession of the claimed invention.

Regarding claim 1, there is not proper support in the original disclosure for referring to “integral small bent or curved portions” since the limitations *integral* and *small* have not been mentioned or defined in the specification. Similarly in claim 1, there is no support in the original

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disclosure for referring to “integral joint portions,” as the specification makes no mention of the joint portions being *integral*, and the drawings do not show joints 9 as being in any way integral. Regarding claim 5, there is not proper support in the original specification for referring to the limitation “each side net member has an integral cross-sectional U configuration.”

It is unclear how the pair of nets and the joint portions are *integrally* formed, e.g. welding, molding, or otherwise connected or formed. These limitations are considered to be new matter.

Claims 2-4, 5, 7-9, and 13 are rejected as being dependent upon the rejected subject matter of claims 1 and 5.

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claim 1 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The claim is vague, indefinite, and incomplete as to what all is meant by and encompassed by the reference to the pair of nets having “integral small” bent portions. Integral is not defined in the disclosure as discussed above, therefore, it is not clear how said portion is “integral.” Further, the claim is vague, indefinite, and incomplete as to what all is meant by and encompassed by the reference to the curves side portions being “small,” and the metes and bounds of the claim are hence undefined.

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Note, the term "small" is a relative term and can be given no definite meaning. It cannot be ascertained by either the specification of the drawing as to exactly what size is meant by "small."

6. Claim 5 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The claim is vague, indefinite, and incomplete as to what all is meant and encompassed by the reference to the pair of side net members having "an integral" cross-sectional configuration.

Claims 2-4, 5, 7-9 and 13 are rejected as being dependent upon the rejected subject matter of claims 1 and 5.

7. Claims 13 and 14 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 13 recites the limitation "the side portions" in line 3. There is insufficient antecedent basis for this limitation in the claim.

Claims 14 recites the limitation "than side the portions" in line 3. There is insufficient antecedent basis for the limitation "the portions," further the above phrase is awkward and confusing.

Drawings

8. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the “integral joint portions” must be shown or the feature canceled from claim 1. No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as “amended.” If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either “Replacement Sheet” or “New Sheet” pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 102

9. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

10. Claims 1-5, 7-10, 13 and 14 are rejected under 35 U.S.C. 102(a) as being anticipated by Plante et al. (US 6,715,445).

Plante et al. (Plant) discloses a bird cage comprising a pair of side net members defined as the combination of elements 44 and 46, wherein 44 has a cross sectional U configuration, a pair of side plate members 48, and joint fastener units 190 having a pair of spaced protruding members with engagement portions for permitting a sliding engagement between the right and left end portions of both the side net members 44, 46 and the side panels 48. Plante's bird cage further comprises a roof member 146, 156 that connects to the net members 44, 46 by engagements fasteners 132a (Figure 3A), wherein fasteners 132a are cantilevered catch members that are biased inward and can flex to permit construction. A mounting base member 72 includes a removable tray 66, and an operable door 52 is disposed in one of the side panels 48. Plante's birdcage is designed so to allow construction without tools.

Regarding the integral small bent or curved portions, elements 44 are curved and integral or connected with elements 46.

Regarding claims 13 and 14, as best understood, portion 144 is considered to be an elongated end member with a larger vertical height than a portion of the cage.

Claim Rejections - 35 USC § 103

11. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person

having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

12. Claims 1-5, 7, and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Voss et al. (USPN 4,577,589), and further in view of Takimoto (USPN 5,448,964).

Voss et al (Voss hereafter) discloses the claimed invention except a mount for supporting the cage main body is not positively disclosed. Voss discloses a cage comprising a cage main body having a roof 3 and a sidewall. The sidewall includes a pair of substantially U-shaped nets 2 with bent or curved side portions, and a pair of plates 1 with their right and left portions connected to said nets via snap joints 20.

Regarding claim 2 the plate 1 is considered to be formed of materials with light transmitting properties since said plate is a grated metal wire and metal is considered to be capable of reflecting light.

Regarding claim 5 and the above discussion, engagement fastener units 10 are positioned on one of the side net members and roof member to enable attachment without tools between the roof member 3 and the side net members 2.

Regarding the mount, Takimoto discloses a similar wire cage that positively teaches a mount base 5, 8 comprising a tray 6 that is slidable since it can be slid between elements 5 and 8 of the mounting base. Takimoto teaches that the wire grate frame 1, 2 locks into the mount 5,8 via preventing fasteners (engaging pieces 11, col.3, lns.37-45). The tray provides for an enclosure and an area to receive animal droppings and feed overflow. It would have been obvious to one having ordinary skill in the art to add a mounting tray, similar to that taught by Takimoto, to the bottom of Voss' bird cage in order to properly form an enclosure and provide a means for collecting animal debris at the bottom of the cage.

Response to Arguments

13. Applicant's arguments filed 3/21/05 have been fully considered but they are not persuasive. Applicant argues that certain elements of Plante's device pointed out by the examiner, are not the same elements that are recited in the claims. For example with regard to claim 10, applicant argues that the roof in Plante is 156, therefore, cantilever's 132 cannot function to attach the roof to the side net because element 132 connects to element 146, which applicant contends is part of a frame not the roof. The examiner respectfully disagrees and maintains that the roof may be encompassed by any members falling within the definition of a roof, which is at least "an upper limit: CEILING" as recited in Merriam Webster's 10th Ed dictionary. Here corner element 146 is considered to be part of the upper limit of the cage in combination with grate 156, and together elements 146 and 156 form a roof. Therefore, Plante's roof 146, 156 is in fact connected to the side net member 44, 46, via cantilevers 132.

The examiner maintains the rejection in view of Plante, and does not find such arguments convincing given the present limitations recited in the claims.

Conclusion

14. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO**

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MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37.

CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

15. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Susan C. Alimenti whose telephone number is 571-272-6897.

The examiner can normally be reached on Monday-Friday, 9am-5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Harvey Behrend can be reached on 571-272-6871. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

16. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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